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No. ____

IN THE

Supreme Court of the United States

SEPTEMBER TERM, 1984

ROBERT CARROLL MORRIS, IV,
Petitioner,

v.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF THE COURT OF APPEALS OF MARYLAND

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QUESTIONS PRESENTED

I.

Can an attorney be compelled to testify in an Attorney Disciplinary Proceeding, over his timley objection, asserting his Fifth Amendment privilege against self-incrimination pursuant to *Spevack* v. *Klien*, 385 U.S. 511 (1967) Where he was in jeopardy for violation of a criminal statute prohibiting attorneys from misappropriating escrow funds?

II.

Can the Maryland Court of Appeals impose the sanction of disbarment based upon testimony wrongfully compelled from an attorney, and admitted in evidence in violation of that attorney's Fifth Amendment Priviledge Against self-incrimination?

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ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF THE COURT OF APPEALS OF MARYLAND

PRELIMINARY STATEMENT

Petitioner, Robert Carroll Morris, IV, prays that a Writ of Certiorari issue to review a judgment of the Court of Appeals of Maryland, entered on January 11, 1984, in the case styled, *Attorney Grievance Commission of Maryland* v. *Robert Carroll Morris, IV*, Misc. Docket (Subtitle BV) No. 7, September Term, 1983, which, among other things, affirmed the denial of the Fifth Amendment privilege against self-incrimination to the attorney who was compelled to testify against himself at the Attorney Grievance Commission hearing over his timely objection. A Motion for Reconsideration addressed to the Maryland Court of Appeals was denied by that Court on February 17, 1984.

OPINIONS

The decision of the Maryland Court of Appeals dated January 11, 1984 is included herein as Appendix A. The denial of the Motion for Reconsideration by the Maryland Court of Appeals is included herein as Appendix B. An excerpt from Petitioner's Memorandum in Support of Motion for Reconsideration raising the constitutional question is included in Appendix C.

JURISDICTION

The jurisdiction of this Honorable Court to issue a Writ of Certiorari is grounded on 28 U.S. Code Section 1254.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

5th Amendment, Federal Constitution

Maryland Code, Article 10, Section 44

Maryland Code, Article 10, Section 45

STATEMENT OF THE CASE

On August 10 and 11, 1983, the Prince George's County, Maryland Circuit Court conducted an Attorney Grievance Commission hearing against Robert Carroll Morris, IV, Petitioner herein. During the hearing, Petitioner asserted the privilege against self-incrimination under the Fifth Amendment of the United States Constitution in response to questions by counsel for the Attorney Grievance Commission. Over Petitioner's objection, the hearing judge ordered him to testify. Based on this testimony, the Circuit Court concluded that the attorney had violated several disciplinary rules. The case was referred to the Maryland Court of Appeals for imposition of sanctions. Petitioner filed no exceptions to the Circuit Court's findings of facts and conclusions of law. In an opinion filed

January 11, 1984, the Court of Appeals held that the findings of fact of the hearing judge were supported by clear and convincing evidence and that those findings warranted his conclusions of law. The sanction imposed was disbarment. Petitioner filed a motion requesting a rehearing, raising his compelled testimony in the Circuit Court as a constitutional issue. On February 17, 1984, the Court of Appeals of Maryland denied Petitioner's Motion for Reconsideration without comment.

STATEMENT OF FACTS

The thrust of the facts presented during the Circuit Court hearing involved allegations that Petitioner had misappropriated his client's funds. The misappropriation of client funds carries a criminal penalty in the State of Maryland. Maryland Code, Article 10, Section 44 (1983 Supp.). To prove these charges, counsel for the Attorney Grievance Commission called Petitioner to take the witness stand to testify. Petitioner objected to testifying on the grounds that the information elicited would be incriminatory, claiming the Fifth Amendment privilege against self-incrimination. Petitioner made this objection at the beginning of his testimony and raised the objection once more during the course of the interrogation. On both occasions, the hearing judge overruled Petitioner's objections, ruling that "the clear authority is, in a grievance proceeding you do not have the availability of the privilege", and ordered him to testify. Bar counsel called no other witnesses who could testify as to whether the client's funds were in a proper account, nor did bar counsel subpoena Petitioner's bank records. The Grievance Commission's case against Petitioner on these charges was based solely on Petitioner's own testimony. Based on this testimony, the hearing judge found that Petitioner had misappropriated the funds of a client, and also that

Petitioner had misrepresented to the client that said funds had been deposited to an escrow account.

When the case was before the Maryland Court of Appeals for final action, Petitioner, on the advice of his previous counsel, raised no exceptions to the trial court's findings of fact and conclusions of law, and asked for leniency. Before imposing its sanction, the Court of Appeals declared that it had meticulously examined the record below, and that it affirmed the findings and conclusions of the hearing judge, thus ratifying the hearing judge's use of Petitioner's compelled testimony.

On his Motion for Rehearing, Petitioner specifically raised the unconstitutionality of the hearing judge's order coercing him to testify and thus incriminate himself. The Court of Appeals denied Petitioner's Motion without comment on any of the issues raised therein.

ARGUMENT

I.

It Was Improper In An Attorney Disciplinary Hearing To Compel Petitioner To Testify Over His Objection Where He Could Be Subject To Criminal Prosecution For Violation Of A Criminal Statute Prohibiting Misappropriation Of Escrow Funds.

The denial of the availability of the Fifth Amendment privilege against self-incrimination to the Petitioner during the disciplinary hearing was an error which should be remedied by this Court. The Maryland Court of Appeals, in refusing to grant a rehearing on this issue, has left this Court as the last recourse of the Petitioner.

The Fifth Amendment to the United States Constitution, providing that "No person . . . shall be compelled in any criminal case to be a witness against himself", is the

origin of the well-known privilege against self-incrimination.

The case of *Malloy* v. *Hogan* established the principle that the Fourteenth Amendment prohibits state infringement of the privilege against self-incrimination just as the Fifth Amendment prevents the Federal Government from denying the privileges. 378 U.S. 1, 8 (1964). This privilege may now be asserted in any type of state proceeding "Civil or Criminal, Administrative or Judicial, Investigatory or Adjudicatory". *Maness* v. *Meyers*, 419 U.S. 449, 464 (1975). In that case, this Court held that a lawyer was correct to advise his client to ignore a Subpoena Duces Tecum in a civil action where the material subpoenaed would tend to incriminate that client if a criminal action were brought against him.

This Court in *In Re Gault* stated:

> "The availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites. The privilege may, for example, be claimed in a civil or administrative proceeding, if the statement is or may be inculpatory." 387 U.S. 1, 49 (1967).

Not only has this Court held, as evidenced by the above-cited opinions, that the Fifth Amendment privilege against self-incrimination may be invoked in any proceeding, but it has also expressly held that the privilege may be invoked by lawyers in disciplinary proceedings. *Spevack* v. *Klein*, 385 U.S. 511 (1967). In that case, a lawyer was disbarred for refusing to produce subpoenaed financial records and refusing to testify at a judical inquiry into allegations of misconduct. The lawyer's defense was that the production of those records and his testimony would tend to incriminate him and

subject him to possible prosecution under the New York Penal Code for solicitation and fee splitting. The New York Courts held that the privilege against self-incrimination was not available to the lawyer under the holding of *Cohen* v. *Hurley*, 366 U.S. 117 (1961). This Court reversed the disbarment, holding that the self-incrimination clause extends its protection to lawyers as well as to individuals, and that no penalty could be imposed on the person for asserting the privilege. *Id.* at 514. In reaching this decision, this Court expressly overruled *Cohen* v. *Hurley*, *Id.*

In citing *Spevack* v. *Klein*, Petitioner is not asserting that the case should stand for more than the proposition that the privilege against self-incrimination is available to attorneys in disciplinary proceedings where the attorney is asked questions, the answers to which might subject him to prosecution for crime in the conventional sense. This reading of *Spevack* is in accord with the opinions of various commentators on that decision. *See*, Franck, *The Myth of Spevack* v. *Klein*, 54 A.B.A.J. 970 (1968); Niles & Kaye, *Spevack* v. *Klein: Milestone or Millstone in Bar Discipline?*, 53 A.B.A.J. 1121 (1967); Chilingirian, *State Disbarment Proceedings and the Privilege Against Self-Incrimination*, 18 Buffalo L. Rev. 489 (1968-1969). This reading of *Spevack* is also congruent with the position taken by the Maryland Court of Appeals. *Maryland State Bar Association* v. *Sugarman*, 273 Md. 306, 329 A.2d 1 (1974).

Thus, the clear weight of authority is that the Fifth Amendment privilege against self-incrimination does apply to an attorney disciplinary proceeding, and it was error for the Maryland Court of Appeals to rule otherwise in this case.

II.

Petitioner Properly Invoked The Privilege Against Self-Incrimination In This Case.

In holding that the Fifth Amendment Self-Incrimination Clause was applicable to State proceedings, this Court in *Malloy* v. *Hogan* also ruled that Federal and State Courts must use the same criteria to determine whether an accused's silence is justified. 378 U.S. 1, 11 (1974). The scope of the privilege against self-incrimination extends to protect evidence which may lead to criminal conviction, and "includes information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution." *Maness* v. *Meyers*, 419 U.S. 449, 461 (1975).

Petitioner in this case clearly met this criterion when he attempted to invoke the Self-Incrimination Clause to protect his testimony at the disciplinary hearing. His testimony subjected him to possible prosecution under the Maryland Code, Article 10, Section 44 (1983 Supp.). Just as it was improper to penalize the lawyer in *Spevack* v. *Klein*, *supra*, for not testifying where his testimony would subject him to possible criminal prosecution, it was equally improper for the hearing judge to order Petitioner to testify when he also faced possible criminal prosecution as a result of his testimony. Had Petitioner refused to testify, he would have been penalized for contempt of Court.

III.

The Sanction Of Disbarment Cannot Be Based Upon A Record Tainted By Improperly Received Evidence.

It was incumbent upon the Maryland Court of Appeals to completely disregard the Petitioner's improperly compelled testimony, and to confine Petitioner's accountability for professional misconduct to evidence other than the compelled testimony. This has not been done by the Maryland Court of Appeals.

In *In Re Ruffalo*, 390 U.S. 544 (1968), this Court reversed the disbarment of a lawyer where the disbarment was a result of a disciplinary proceeding in which the evidentiary foundation for the charge against him had been tainted, this Court concluding there was a deprivation of procedural due process.

Following this example, the Court of Appeals of Maryland in a similar case, found itself constrained to completely disregard a charge of misconduct which stemmed from procedurally tainted evidence, and limited its sanction solely to charges that were supported by properly received evidence. *The Bar Association of Baltimore City* v. *Cockrell*, 274 Md.279, 334 A.2d 98 (1975). In the instant case, the Maryland Court of Appeals declined to do this. Its decision was error in light of its previous opinion in *Cockrell, supra*, and this Court's decision in *Ruffalo, supra*.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a Writ of Certiorari should be granted and the judgment in this case reviewed.

Respectfully submitted,

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5303 Baltimore Avenue
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(301) 864-6070
Attorney for Petitioner

APPENDICES

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

Misc. Docket (Subtitle BV)
No. 7
SEPTEMBER TERM, 1983

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

v.

ROBERT CARROLL MORRIS, IV

Murphy, C.J.
Smith
Eldridge
Cole
Davidson
Rodowsky,

JJ.

PER CURIAM

Filed: January 11, 1984

I, ALEXANDER L. CUMMINGS, Clerk of the Court of Appeals of Maryland, the highest Court of said State, do hereby certify that this is a full and true copy of the opinion, the original of which is on file in the office of said Clerk in the case of *Attorney Grievance Commission of Maryland* v. *Robert Carroll Morris IV*, Misc. Docket (Subtitle BV) No. 7, September Term, 1983.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Clerk and affixed the seal of the said Court of Appeals of Maryland this 11th day of January, 1984.

Alexander L. Cummings
ALEXANDER L. CUMMINGS
Clerk
Court of Appeals of Maryland

COSTS ASSESSED:

Inquiry Panel (9/18/82)	$ 220.50
Transcript for 9/18/82 hearing	964.00
Inquiry Panel (10/16/82)	40.50
Transcript for 10/16/82 hearing	10.00
May 23, 1983, certified copies from C. C. for Prince George's County, Land Records	8.50
Deposition of People's Security Bank and Robert C. Morris IV, held on 6/17/83	52.50
Trial Judge hearing on Motions held on 6/24/83	10.00
Deposition (continued) of Robert C. Morris IV, held 7/27/83	32.50
Trial Judge Hearing on Motion held on 8/1/83	72.00
Deposition (continued) of Robert C. Morris IV, held 8/4/83	172.50
Deposition (continued) of Robert C. Morris IV, held 8/8	87.50
Bank records—Perpetual American Savings & Loan Assoc. of 8/9	10.40
Transcript of Trial Judge hearing of 8/10 and 8/11/83	733.50
Final Argument before Trial Judge held 9/26/83	31.50
TOTAL	$2,445.90

PER CURIAM:

Bar Counsel, acting pursuant to the provisions of Maryland Rule BV9, filed a petition with us on behalf of the Attorney Grievance Commission seeking disciplinary action against Robert Carroll Morris IV, a member of the Bar of this Court. The petition alleged a violation of the Disciplinary Rules in connection with Morris' representation of Addie Louise Martin in an automobile accident case and a violation of the Disciplinary Rules in connection with his representation of the estate of Wilbur Max Poynton.

Pursuant to the Rule BV9 b we referred the matter for hearing to one of the judges of the Seventh Judicial Circuit of Maryland. He has filed with us a report which states:

FINDINGS OF FACT

"ADDIE LOUISE MARTIN

"Addie Louise Martin (hereinafter referred to as 'Mrs. Martin') was injured in an automobile accident on November 16, 1978, in Prince George's County. On that day, Mrs. Martin hired the Respondent to represent her in her claims for personal injuries and property damage resulting from that accident. Under the contract of employment between Mrs. Martin and the Respondent, the Respondent agreed to handle Mrs. Martin's case for a contingency fee of one-third (1/3) of the amount recovered, the remainder to go to the client. In addition, Mrs. Martin agreed to be responsible for costs and expenses.

"The Respondent filed suit in the District Court of Maryland on behalf of Mrs. Martin against Christopher Lockwood and John Lockwood, Sr. The Defendants in that case were represented by Edward C. Bell, Esquire, who caused the said case to be removed to the Circuit Court for Prince George's County as a result of his request for jury trial. Trial was set for August 12, 1980; however, because no judge was available to hear the case, it was postponed. (*Martin* v. *Lockwood*, Law No. 76,921).

"During a pre-trial conference in December, 1980, before the Honorable Vincent J. Femia, of the Circuit Court for Prince George's County, the Respondent stated to Mr.

Bell and to Judge Femia that he proposed to introduce into evidence medical bills even though the Respondent admitted at that time that he had no evidence that the said medical bills were made necessary because of the occurrence (with the hope that the jury would keep one or more of them in mind when assessing damages).

"On the evening of July 16, 1981, at the restaurant, the Respondent met, for the first time, Carl H. Hellmann. The two were introduced to each other by a mutual acquaintance. During their conversation after their introduction, Hellmann learned that the Respondent was an attorney and the conversation turned to the case of *Martin* v. *Lockwood*, *supra*. The Respondent invited Hellmann to help out with the case. Hellmann knew that the Respondent was the attorney for Mrs. Martin and that his services were necessary for the presentation of Mrs. Martin's case. Hellmann has taken a number of courses at the post-graduate level, but is not a college graduate. He has some experience in investigating traffic accidents and testifying as an expert witness. Hellmann quoted a fee range of between $50.00 to $150.00 per hour and $500.00 per day in court, plus expenses. Hellmann did tell the Respondent, however, that sometimes his fee could be as high as $300.00 per hour. In any event, the Respondent requested Hellmann at their first meeting on July 16, 1981, to assist in the preparation of Mrs. Martin's case. Hellmann and the Respondent never agreed upon an amount or method of compensation. Further, the Respondent did not personally guarantee the payment of Mr. Hellmann's fee. Hellmann stayed up all night reviewing the Respondent's file on that case and preparing a preliminary typewritten report, which he completed at approximately 7:00 a.m. on July 17, 1981. On the morning of July 17, 1981, Hellmann accompanied the Respondent to a settlement conference before the Honorable Jacob S. Levin. Hellmann gave the Respondent his preliminary report. Hellmann valued his work on this preliminary report at $1,000.00, but he testified that he wrote it off. He did, however, accept a cash retainer fee of $100.00 on the morning of July 17, 1981, from the Respondent.

"The trial of *Martin* v. *Lockwood* commenced on July 27, 1981, before the Honorable James H. Taylor and a jury, and concluded on July 20, 1981 [sic]. The ultimate

verdict in the case was a judgment for Mrs. Martin in the amount of $4,000.00, after a remittitur was entered. Mrs. Martin never endorsed that check. Her signature was placed on the check by an employee of the Respondent, although the Respondent knew of that fact after the endorsement and did nothing to correct it, he did not participate directly in the forgery. In August or September, 1981, the Respondent misrepresented to his client, Mrs. Martin, that he had placed the proceeds of the GEICO draft into an escrow account, when in fact he had not.

"The Respondent's Inquiry Panel hearing on these matters was held on September 17, 1982, in the law offices of Darlene G. Perry, Esquire. On that same day, an account was opened up at People's Security Bank of Maryland in the Respondent's name, account number 64-4241-7, with an initial deposit of $4,000.00. The $4,000.00 with which this account at People's Security Bank was opened was not the same $4,000.00 fund which the Respondent had received from GEICO as documented by Petitioner's Exhibit No. 6, back on August 14, 1981. (Paragraph 2(c) of Petitioner's Exhibit No. 2). The Respondent testified that he did not know whose money was used to open the said account at People's Security Bank of Maryland on September 17, 1982.

"CONCLUSIONS OF LAW

"1. By misappropriating and converting to his own use the $4,000.00 recovery in the case of *Martin* v. *Lockwood* between August 14, 1981 and September 1, 1982, the Respondent violated Disciplinary Rules 1-102 (A)(1), (3), (4), (5) & (6); 9-102(A) & (B); as well as Article 10, Section 44 of the Annotated Code of Maryland. See *Bar Association of Baltimore City* vs. *Marshall*, 265 Md. 510, 307 A.2d 677 (1973), *Attorney Grievance Commission* v. *Bailey*, 294 Md. 526, 451 A.2d 1210 (1982), *Attorney Grievance Commission* v. *Flynn*, 283 Md. 41, 387 A.2d 775 (1978), and *Attorney Grievance Commission* v. *Boehm*, 293 Md. 476, 446 A.2d 52 (1982).

"2. By misrepresenting to his client, Mrs. Martin, that he had placed the $4,000.00 fund which he had received from GEICO (Petitioner's Exhibit No. 6) into an escrow

account, when in fact he had not, the Respondent violated Disciplinary Rule 1-102(A)(4).

"FINDINGS OF FACT

"WILMA BRIGGLES

"In October, 1980, the Respondent wrote the will of Wilbur M. Poynton, who subsequently died on January 14, 1981. The will was admitted to probate by Wilma Briggles, one of two surviving children of Wilbur Max Poynton. The decedent's other surviving child was Roy Max Poynton, the brother of Wilma Briggles. The will required the decedent's property to be divided evenly between those two surviving children.

"Specifically, Wilma Briggles did the following on Jnauary 16, 1981, in the Orphans' Court for Prince George's County:

"1. Filed the Last Will and Testament.

"2. Filed the Petition for Probate.

"3. Filed the Acceptance and Consent of the Personal Representative.

"4. Filed a nominal bond.

"5. Obtained an Order admitting the will to probate.

"6. Obtained letters testamentary.

"7. Made arrangements for the notice to creditors.

"By letter dated February 2, 1981, the Respondent advised Wilma Briggles that he had set Friday, February 6, 1981, at 4:30 p.m., in his office for the reading of her father's will. Wilma Briggles did in fact appear in the Respondent's office on February 6, 1981, at which time she hired the Respondent to represent her as the Personal Representative and/or to represent the estate of Wilbur M. Poynton. The Respondent requested and received a fee of $500.00 at that meeting from Wilma Briggles, who wrote a check payable to the Respondent in that amount from the estate checking account. At that meeting, the Respondent advised her to stop making the mortgage payments on the house where the decedent had lived up until his death. The house was the only major asset in the

estate and Perpetual American Federal Savings and Loan Association held a first deed of trust on the said property, which, at that time, had a total balance in excess of $3,500.00. Wilma Briggles made no further payments.

"The Respondent did not file anything in the said estate until November 4, 1981, when he filed an Inventory along with a notation entering his appearance. In the interim, Wilma Briggles had filed the Information Report herself on June 15, 1981. On May 13, 1981, the Register of Wills sent Wilma Briggles a notice that the Inventory and Information Report for the estate were overdue and requested that they be filed by June 12, 1981. (See Petitioner's Exhibit No. 26).

"In February, 1981, the Respondent contacted Prince George's Properties with regard to listing the house for sale. As a result, a listing contract was entered into between Wilma Briggles and Prince George's Properties, dated February 17, 1981. A contract offer, dated March 8, 1981, was submitted to Wilma Briggles under that listing agreement by Osbourne Owings. The purchase price of the offer was $30,000.00, later reduced to $29,100.00, as a result of a counter-offer. As soon as she received this contract, Wilma Briggles gave it to the Respondent and asked him for his advice as to what to do with it. The Respondent failed to give Wilma Briggles any advice on the said contract through early May, 1981. Mr. Petroni and Mr. Woodring of Prince George's Properties had a meeting with the Respondent on this contract in early June, 1981, at which time the Respondent advised them that he would recommend to his client, Wilma Briggles, that the contract be accepted. However, at about the same time, the Respondent told Wilma Briggles not to accept the contract and that his father or he, himself, would purchase the house. Mr. Woodring and Mr. Petroni left the said meeting believing that the said contract was going to be accepted as a result of the representations which the Respondent made to them. However, the Respondent then wrote to Osbourne Owings, by his letter dated June 24, 1981 to formally withdraw his client's contract, stating, in part, that it was unfortunate that the offer and counter-offer were never accepted. Osbourne Owings was ready, willing and able to purchase the said property between March and June of 1981.

"Wilma Briggles and her brother, Max Poynton, sold the house for $24,000.00 on November 6, 1981, to Leroy J. Daniels and took back, as part of the purchase price, an interest-free five year note in the amount of $14,900.00 with no provision for any monthly payments. The Respondent did not attend that settlement, nor did he aid Wilma Briggles in any way with respect to that transaction.

"Wilma Briggles testified that on December 28, 1981, she wrote the Respondent and discharged him as her attorney. However, the Respondent never did withdraw his appearance in the Orphans' Court case after that date. The Respondent replied to Wilma Briggles' December 28, 1981 letter with his letter dated January 6, 1982, which is also his bill to Wilma Briggles as Personal Representative of the estate, showing a total balance due of $1,845.00. The bill falsely indicated that he had obtained an Order admitting the will to probate obtained testimony of subscribing witnesses, obtained a certificate of proof of will, obtained letters testamentary and handled the publication of notice to creditors and prepared a preliminary estate tax report. In addition, the Respondent included a bill for preparation of the Inventory twice under paragraph 1 and paragraph 8 of the said bill. The bill also includes items for two loans of $100.00 to Max Poynton. The bill also contains charges for services to Wilma Briggles' son, George Briggles, in the total amount of $500.00, which did not pertain to the estate.

"Wilma Briggles challenged the Respondent's bill and a hearing was held on counsel fees before the Honorable Steven I. Platt, on March 5, 1982. During the course of that hearing, the Respondent was discourteous to Judge Platt in that he made comments on the way he ran his courtroom, interrupted Judge Platt and misrepresented on the record what Judge Platt had stated during that hearing. As a result of the Respondent's conduct at that hearing, Judge Platt recused himself, and the hearing on counsel fees was continued.

"On April 1, 1982, the Respondent filed his Petition for the Allowance of Counsel Fees in the estate. Thereafter, the matter was heard by Judge C. Philip Nichols, Jr. At the hearing on April 16, 1982, the Respondent misrepresented to Judge Nichols that the $500.00 fee which Wilma Briggles had paid him in the Orphans' Court matter was

for other matters as well. In fact, Wilma Briggles had paid the Respondent a separate fee of $500.00 from her credit union to handle her domestic case. This payment was also made in February of 1981, but was entirely separate from the other fee which was paid from the estate checking account. In addition, at that hearing, the Respondent attempted to obtain reimbursement, in the form of a fee from the estate, of two $100.00 loans to Max Poynton, as well as compensation for time spent responding to the Attorney Grievance Commission regarding Max Poynton's complaint.

"CONCLUSIONS OF LAW

"1. By failing to enter his appearance or to file anything in the Orphans' Court file of Wilbur Max Poynton until November 4, 1981, while, among other things, his client was being notified that the Inventory and Information Report were overdue, and by failing to pursue the March 8, 1981 contract with Osbourne Owings, the Respondent violated Disciplinary Rules 1-102 (A)(1), (5) & (6); 6-101 (A), (2) & (3), and 7-101 (A)(1), (2) & (3).

"2. By proposing himself and/or his father as possible buyers for the subject home, and by, at about the same time, rejecting the outstanding offer of Osbourne Owings, the Respondent violated Disciplinary Rule 5-101 (A).

"3. By drafting and having Max Poynton sign and then by submitting the Request for Withdrawal of Complaint to the Attorney Grievance Commission, the Respondent violated Disciplinary Rules 1-102(A) (5) & (6).

"4. By billing $1,845.00 to the estate, the Respondent charged a clearly excessive fee in violation of Disciplinary Rule 2-106.

"5. The Respondent violated Disciplinary Rule 2-110(B)(4) by failing to withdraw from the Orphans' Court case after he was discharged by Wilma Briggles per her letter of December 28, 1981.

"6. By misrepresenting on his bill the work which he had done on the estate, i.e., listing things which Wilma Briggles herself had done even before he was hired as the attorney, the Respondent violated Disciplinary Rules 1-102(A)(1), (4), (5), & (6) and 2-106.

"7. By attempting to bill for the estate for services rendered to George V. Briggles, son of Wilma Briggles, which services had nothing to do with the estate and by attempting to secure the payment with confession of judgment notes payable from the estate, the Respondent violated Disciplinary Rules 1-102(A)(1), (4), (5) & (6); 2-106; 7-101(A)(3); and 7-101(A)(2). See also *Riddleberger* v. *Goeller*, 263 Md. 44, 282 A.2d 101 (1971) and *Gradman* v. *Brown*, 183 Md. 634, 39 A.2d 808 (1944).

"8. By engaging in undignified and discourteous conduct before Judge Platt, by his misrepresentations and by commenting on the way Judge Platt ran his courtroom, as a result of which Judge Platt recused himself, the Respondent violated Disciplinary Rules 1-102(A)(1), (4), (5) & (6); and 7-106(C)(6) & (7).

"9. By misrepresenting to Judge Nichols on April 16, 1982 that the $500.00 fee which he had received from Wilma Briggles on February 6, 1981 was for other matters, the Respondent violated Disciplinary Rules 1-102(A)(1), (4), (5) & (6).

"10. By attempting to obtain reimbursement of two $100.00 loans to Max Poynton; before the Honorable Philip C. Nichols, Jr., on April 16, 1982, and for the time spent responding to the Attorney Grievance Commission, the Respondent violated Disciplinary Rules 1-102(A)(1), (5) & (6); and 2-106."

Morris has filed no exceptions. He did appear before us with counsel. He and counsel spoke of the fact that Morris intended no wrongdoing and pleaded for leniency. Bar Counsel, on the other hand, has recommended disbarment.

Although no exceptions were filed, we have meticulously examined the record in this case. There is clear and convincing evidence to support the findings of fact of the trial judge. Those findings warrant his conclusions of law.

No extenuating circumstances for Morris' misconduct have been set forth, nor do we find any. Under the sum total of the circumstances here, disbarment is the proper sanction to be imposed.

IT IS SO ORDERED; RESPONDENT SHALL PAY ALL COSTS AS TAXED BY THE CLERK OF THIS COURT, INCLUDING COSTS OF ALL TRANSCRIPTS, PURSUANT TO MARYLAND RULE BV15c, FOR WHICH SUM JUDGMENT IS ENTERED IN FAVOR OF THE ATTORNEY GRIEVANCE COMMISSION AGAINST ROBERT CARROLL MORRIS IV.

APPENDIX B

Court of Appeals

of Maryland

Courts of Appeal Building

Annapolis, Md. 21401-1699

ALEXANDER L. CUMMINGS
CLERK

ROBERT C. FRANKE
CHIEF DEPUTY

VIRGINIA S. HUBBARD
MARY J. MORRIS
JANE A. FAUOREE
DEPUTIES

269-3341
WASHINGTON AREA 261-2999

February 21, 1984

Carlton M. Green, Esq.
Attorney at Law
P.O. Box 128
Hyattsville, MD 20781

Re: Attorney Grievance Commission of Maryland
v. Robert Carroll Morris IV
Misc. Docket (Subtitle BV) No. 7
September Term, 1983

Dear Mr. Green:

The Court has considered the motion for reconsideration filed in the above entitled matter and has denied said motion on February 17, 1984.

Very truly yours,

Alexander L. Cummings
ALEXANDER L. CUMMINGS
Clerk

ALC/h
cc: Walter D. Murphy, Jr., Esq.

APPENDIX C

Excerpt from Memorandum in Support of Motion for Reconsideration

(2) *Procedural defect in this proceeding.*

Respondent imprudently chose to represent himself in the trial court hearing on the Petition for Disciplinary Action which, among other charges, alleged a violation of Maryland Code, Article 10, Section 44, which calls for criminal sanctions for violations of its provisions. When counsel for the Attorney Grievance Commission sought to compel Respondent to testify, Respondent asserted his privilege against self-incrimination under the Fifth Amendment of the United States Constitution. Over his objection, the trial judge compelled him to testify (Transcript Volume II, August 11, 1983, page 23).

In *Spevack* v. *Klein*, 385 U.S. 511, 17 L.ed. 2d 574, 87 S. Ct. 625, the Supreme Court, in a plurality decision, held that the protection against self-incrimination of the Fifth Amendment (which applies to the states through the Fourteenth Amendment Nexus) is extended to lawyers in disciplinary proceedings, and forbade the imposition of disbarment as a penalty for remaining silent. There, a New York attorney refused to produce private financial records and refused to testify at the judicial inquiry on the basis that the information sought tended to incriminate him. In his decisive concurring opinion, Justice Fortas distinguished private records from records properly required by law to be kept and produced by lawyers. Fortas stressed that the latter could be properly subpoenaed under the required records doctrine.

The State of Maryland addressed this issue in *Andresen* v. *Bar Ass'n of Montgomery Co.*, 269 Md. 313, 305 A.2d 845 (1972). There the Court noted that constitutional protection against compulsory self-incrimination was applicable to civil disciplinary proceedings, and the protection extended to both oral testimony and private documentary evidence of a testimonial nature. *Id.* at 322. The Court also recognized that certain

customarily kept records having "public aspects" could be required to be produced in an essentially non-criminal, regulatory judicial inquiry. There, the Court held that the trial court could order an attorney to produce his accounts of real estate transactions under the required records doctrine, even though those accounts tended to incriminate him.

The holdings of both *Spevack*, *supra*, and *Andresen*, *supra*, are controlling on the issue raised by Respondent in the instant case. It is undisputable that the Attorney Grievance Commission had the right to subpoena Respondent's escrow account records under the required records doctrine; because, the Maryland State Law specifically requires that attorneys account for client funds held in escrow. Maryland Code, Article 10, Section 44 (1983 Supp.). However, it is equally clear from the above decisions that the hearing court below could not compel Respondent to orally testify over his objection at trial regarding those records. Such action by the trial judge violated Respondent's constitutional rights and unfairly prejudiced him in this matter.

In *Maryland State Bar Association* v. *Sugarman*, 273 Md. 306, 329 A.2d 1 (1974), in dicta, the Court narrowly read the holding in *Spevack*, *supra*, as only providing the privilege against self-incrimination in a criminal proceeding. The Court ruled that attorney disciplinary hearings are not criminal proceedings, and thus the Fifth Amendment did not protect lawyers during disciplinary inquiries. The Court held that the Federal immunity Statute did not prevent the lawyer's inculpatory statements from being used against him in a disbarment proceeding.

The Court's narrow reading of *Spevack*, *supra*, seems to be totally at odds with the Supreme Court's decision which expressly stated that the Fifth Amendment protection against self-incrimination extended to disciplinary hearings regardless of whether those hearings were criminal or civil matters. *Spevack*, *supra*, 385 U.S. 511, 17 L.ed. 2d 574, 87 S.Ct. 625. Furthermore, in the instant case, Respondent is liable for

criminal sanctions as he is charged with the misappropriation of client funds under Maryland Code, Article 10, Section 44, which carries a criminal penalty. Finally, the Court in *Sugarman, supra*, does not address (aside from the above dicta) the issue of whether a lawyer may be compelled to testify against himself at the judicial hearing, only whether previously made inculpatory statements may be used against him. For these reasons, the Court's opinion in *Sugarman, supra*, does not affect Respondent's arguments based on *Spevack, supra* and *Andresen, supra*.

The trial court in the instant case took Respondent's compelled testimony into account in arriving at its conclusions of law and fact. In *Bar Ass'n of Baltimore City* v. *Cockrell*, 274 Md. 270, A.2d (1975), a hearing panel took account of a lawyer's self-inculpatory testimony that had been ruled to have been tainted. Hence, the Court of Appeals held that the testimony could not be a basis for the hearing panel's decision, and that the issue of the lawyer's culpability in respect to the charges stemming from the tainted testimony had to be disregarded. Similarly, in the instant case, the trial court could not have used Respondent's testimony as a basis for its decision as that testimony was tainted by the infringement on Respondent's rights against self-incrimination. Thus, this case should be remanded for a trial court determination of whether there were disciplinary violations without a consideration of the wrongfully compelled testimony.

As a final point, Respondent could not testify on his own behalf without waiving his right to appeal the trial court's overruling of his objection against being forced to make a self-incriminating testimony. As a result, Respondent's defense of the charges was severely handicapped. Thus, this case should be remanded so that Respondent might present his side of the case in a fair proceeding.